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 United States of America

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CONTINENTAL CASUALTY  
 COMPANY,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
 UNITED STATES POSTAL SERVICE, and  
 DAVID W. TYLER,

Defendants.

UTE SISTRUNK,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
 UNITED STATES POSTAL SERVICE, and  
 DAVID W. TYLER, and DOES 1 to 20,

Defendants.

No. C 02-4891 VRW (ARB)  
 Related to No. C 02-5292 VRW (ARB)  
 E-FILING CASE

STIPULATION AND AGREEMENT OF  
 COMPROMISE AND SETTLEMENT  
 AND ~~PROPOSED~~ ORDER

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF  
 FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677

It is hereby stipulated by and between the undersigned plaintiffs, Ute Sistrunk and  
 Continental Casualty, and defendant, United States of America, by and through their respective

attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay the cash sum of One Million Seven Hundred and Fifty Thousand and no cents (\$1,750,000) to Plaintiffs Ute Sistrunk and Continental Casualty Company, which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which plaintiffs or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees, including but limited to the United States Postal Service ("USPS") and David Tyler, a USPS employee.

3. Plaintiffs and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, any and all liens, including but not limited to, all medical liens, mechanics liens, attorney fee liens and workers' compensation liens, including but not limited to the lien of Continental Casualty Company, rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Plaintiff Continental Casualty and its guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights or subrogated or contribution

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1 interests seeking reimbursement of workers' compensation benefits paid to and/or on behalf of Ute  
2 Sistrunk arising out of the industrial accident that is the subject of the consolidated actions herein.  
3 Plaintiff Ute Sistrunk, and her heirs, executors, administrators or assigns further agree to reimburse,  
4 indemnify and hold harmless the United States of America, its agents, servants, and employees from  
5 and against any and all causes of action, claims, liens, rights, or subrogated or contribution interests,  
6 excepting any by Continental Casualty and its guardians, heirs, executors, administrators or assigns,  
7 incident to or resulting from further litigation or the prosecution of claims by Ute Sistrunk, or her  
8 guardians, heirs, executors, administrators, or assigns against any third party or against the United  
9 States of America, including claims for wrongful death, arising out of the accident that is the subject  
10 of the consolidated actions herein, excepting any claims and or actions to enforce the terms of the  
11 settlement agreement.

12 4. This stipulation for compromise settlement is not, is in no way intended to be, and should  
13 not be construed as, an admission of liability or fault on the part of the United States, its agents,  
14 servants, or employees, and it is specifically denied that they are liable to the plaintiffs. This  
15 settlement is entered into by all parties for the purpose of compromising disputed claims under the  
16 Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

17 5. It is also agreed, by and among the parties, that the respective parties will each bear their  
18 own costs, fees, and expenses and that any attorney's fees owed by the plaintiffs will be paid out of  
19 the settlement amount and not in addition thereto.

20 6. It is also understood by and among the parties that pursuant to Title 28, United States  
21 Code, Section 2678, attorney's fees for services rendered in connection with this action shall not  
22 exceed 25 per centum of the amount of the compromise settlement.

23 7. The persons signing this Settlement Agreement warrant and represent that they possess  
24 full authority to bind the persons on whose behalf they are signing to the terms of the settlement.  
25 In the event any plaintiff is a minor or a legally incompetent adult, the plaintiffs must obtain Court  
26 approval of the settlement at their expense. Plaintiffs agree to obtain such approval in a timely  
27 manner: time being of the essence. Plaintiffs further agree that the United States may void this  
28 settlement at its option in the event such approval is not obtained in a timely manner. In the event

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1 plaintiffs fail to obtain such Court approval, the entire Stipulation For Compromise Settlement And  
 2 Release and the compromise settlement are null and void.

3 8. Payment of the settlement amount will be made by check drawn from the funds of the  
 4 United States Postal Service for One Million Seven Hundred and Fifty Thousand dollars  
 5 (\$1,750,000) and made payable to Ute Sistrunk and Continental Casualty Company upon the filing  
 6 of the dismissal of this action. The check will be mailed to plaintiffs' attorney at the following  
 7 address: Clark W. Patten, Esq., 555 12<sup>th</sup> Street, Suite 1900, Oakland, CA 94607. Plaintiffs'  
 8 attorneys agree to assume responsibility for allocation and distribution of the settlement proceeds  
 9 among the plaintiffs, and to obtain a dismissal of the above-captioned action with prejudice, with  
 10 each party bearing its own fees, costs, and expenses.

11 9. The parties agree that this Stipulation for Compromise Settlement and Release, including  
 12 all the terms and conditions of this compromise settlement and any additional agreements relating  
 13 thereto, may be made public in their entirety, and the plaintiffs expressly consent to such release and  
 14 disclosure pursuant to 5 U.S.C. § 552a(b).

15 10. It is contemplated that this Stipulation may be executed in several counterparts, with a  
 16 separate signature page for each party. All such counterparts and signature pages, together, shall be  
 17 deemed to be one document.

18  
 19  
 20 Dated: 1/6/07

Ute Sistrunk

UTE SISTRUNK

Plaintiff

21  
 22  
 23  
 24 Dated: Jan/6/07

By: H. Mal Cameron

H. MAL CAMERON

Attorney for Plaintiff Ute Sistrunk



1  
2 Dated: 1/17/07

3 By: [Signature]  
4 CONTINENTAL CASUALTY CO.  
5 Plaintiff's Designated Representative

6  
7 Dated: 19 Jan 07

8 By: [Signature]  
9 CLARK PATTEN  
10 Attorney for Plaintiff Continental Casualty Company

11 KEVIN V. RYAN  
12 United States Attorney

13  
14  
15 Dated: 1/25/07

16 By: [Signature]  
17 ANDREW Y.S. CHENG  
18 KATHERINE B. DOWLING  
19 Assistant United States Attorneys  
20 Attorneys for the Federal Defendant  
21 United States of America

22 **PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT,**  
23 **THIS CASE IS DISMISSED WITH PREJUDICE.**  
24 **SO ORDERED AND APPROVED.**

25  
26 Dated: 01 FEB 2007

27 [Signature]  
28 VAUGHN R. WALKER  
United States District Judge

